

Law-Based Arguments and Messages to Advocate for Later School Start Time Policies
in the United States

Clark J. Lee, JD, MPH, CPH^{a,b}

clee@law.umaryland.edu or cjlee@post.harvard.edu

Dennis M. Nolan, JD, CWLS^c

dennis.nolan@pubdef.ocgov.com

Steven W. Lockley, PhD^{d,e}

slockley@hms.harvard.edu

Brent Pattison, JD^f

brent.pattison@drake.edu

^a Center for Health and Homeland Security & Center for Health Outcomes Research
University of Maryland, Baltimore
500 West Baltimore Street, Baltimore, Maryland 21201, U.S.A.

^b Department of Behavioral and Community Health, School of Public Health
University of Maryland, College Park
4200 Valley Drive, College Park, Maryland 20742, U.S.A.

^c Orange County Public Defender, Juvenile Court Office
341 The City Drive South, Suite 307, Orange, California 92868, U.S.A.

^d Division of Sleep and Circadian Disorders, Brigham and Women's Hospital
Division of Sleep Medicine, Harvard Medical School
221 Longwood Avenue, Boston, Massachusetts 021115, U.S.A.

^e Monash Institute for Cognitive and Clinical Neurosciences
School of Psychological Sciences
Monash University
Wellington Road, Clayton, Victoria 3800, Australia

^f Joan and Lyle Middleton Center for Children's Rights, Drake Legal Clinic
Drake University Law School
2400 University Avenue, Des Moines, Iowa 50311, U.S.A.

Authors' Note: The contents of this article should not be construed as legal advice in any way and should be used strictly for informational purposes only. Please consult with appropriate legal counsel for formal legal advice. Correspondence concerning this article should be addressed to Clark J. Lee, University of Maryland Center for Health and Homeland Security, 500 West Baltimore Street, Baltimore, Maryland 21201, U.S.A. Telephone: +1 (240) 777-4569; E-Mail: clee@law.umaryland.edu or cjlee@post.harvard.edu. CJL and SWL are unpaid members of the Advisory Board of Start School Later, Inc. DMN is the author of *The Impact of School Start Times on Adolescent Health and Academic Performance* web blog (<https://schoolstarttime.org>). The final published version of this article is available online at <http://dx.doi.org/10.1016/j.sleh.2017.09.003>.

ACCEPTED MANUSCRIPT (Submitted in Revised Form 24 Aug. 2017; Accepted for Publication 8 Sept. 2017)

© 2017. This manuscript version is made available under the CC-BY-NC-ND 4.0 license
(<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

22

1. Introduction

23

24

25

26

27

28

29

30

The mounting scientific evidence of the adverse health, safety, behavioral, and academic impacts that early daily school start times have on American teenagers¹⁻⁷ has inspired recent advocacy efforts to promote the implementation of later daily start time policies in public secondary schools across the United States.^{8,9} These efforts have relied primarily on arguments and messages relating to the positive health, safety, behavioral, academic, economic, and budgetary impacts of such policies on students, schools, and communities.^{10,11} To date, however, law-based arguments and messages rarely have been incorporated into advocacy efforts to promote later school start time policies.

31

32

33

34

35

36

37

38

39

Law-based arguments and messages are developed from legal authorities, precedents, and principles set forth in sources of law such as constitutions, legislation and statutes, agency rules and regulations, executive orders and actions, court decisions, legal instruments, and official policies and procedures. Litigation, whether via private lawsuit or class action, is the most obvious advocacy activity that applies law-based arguments and messages to influence governmental action and public policy at the local, state, and federal levels. Law-based arguments and messages also can be applied to other advocacy activities, however, such as testimony at public meetings of governmental bodies, private meetings and correspondence with individual decision-makers, and public outreach with the media and community stakeholders.

40

41

42

43

44

This article provides an overview of how law-based arguments and messages can be constructed and applied to advocate for later start time policies in U.S. public secondary schools. After briefly reviewing the history of later school start time policies and advocacy efforts in the U.S., an argument is made for incorporating law-based arguments and messages into future advocacy efforts (**Section 2**). Next, the legal infrastructure impacting school start time policies

45 in the U.S. is discussed, including governmental regulation of education, the legal obligations
46 school officials have concerning their students' welfare, and existing laws and public policies
47 addressing adolescent sleep health and safety (**Section 3**). Based on this legal infrastructure,
48 some hypothetical examples of law-based arguments and messages that could be applied to
49 various types of advocacy activities (*e.g.*, litigation, legislative and administrative advocacy,
50 media and public outreach) to promote later school start times are discussed (**Section 4**). Finally,
51 some concluding remarks about using law-based arguments and messages to advocate for later
52 school start time policies are provided (**Section 5**).ⁱ

ⁱ The contents of this article should not be construed as legal advice in any way and should be used strictly for informational purposes only. **Readers should consult with their legal counsel for formal legal advice.** Furthermore, the views and opinions expressed in this article are entirely those of the authors and do not represent the official positions of the authors' respective affiliated institutions.

53 2. Advocating for Later School Start Times in the United States

54 In 1913, educational psychologist Lewis Terman and Adeline Hocking observed that U.S.
55 students slept 60 to 90 minutes longer than children and adolescents in earlier starting European
56 schools.^{12,13} Recognizing the association between school hours and sleep sufficiency, Terman
57 and Hocking counseled:

58 The European custom of beginning school at 7 to 8 o'clock in the morning
59 works great hardship, often causing the pupil to rush away to school in
60 nervous haste and without breakfast. The American practice of beginning
61 at 9 o'clock is far wiser, and should never be changed unless for very
62 special reasons.^{13(p271)}

63 As American school districts grew in size and complexity and as public schools evolved to
64 provide care for the children of working and middle class laborers over the next century,
65 however, the "wiser" 9 a.m. start time gradually yielded to earlier starting hours.¹⁴⁻¹⁸

66 Recent advances in knowledge about adolescent sleep health¹⁹⁻²² suggest that the early
67 daily school start time policies currently prevalent throughout the U.S. may have profound
68 deleterious impacts on adolescent students.^{1,2,4,23-31} In brief, adolescents naturally experience on
69 average a 2- to 3-hour delay of their internal circadian (24-hour) clock,³² which in turn delays
70 when they can fall asleep and obtain good quality sleep to a later time of night. Furthermore, the
71 brain mechanisms regulating the accumulation of homeostatic sleep "pressure" (*i.e.*, the
72 threshold at which sleep can occur) become slower in adolescence so that adolescents require a
73 longer wake episode before reaching their threshold for sleep.³² Consequently, teenagers cannot
74 fall asleep early enough to obtain the 8 to 10 hours of sleep per night recommended by the
75 American Academy of Sleep Medicine³³ before waking up for school in the morning, causing
76 them systematic sleep loss.²³⁻³⁰ In addition to the immediate safety concerns associated with
77 increased sleepiness,²⁸⁻³⁰ chronic sleep loss has significant negative impacts over time on the

78 overall welfare of adolescent students, including on their risk-taking behavior,³¹ brain
79 development,³⁴ and risk of depression.^{1,35}

80 Growing recognition of the adverse consequences arising from the lack of
81 synchronization between the daily school start times and circadian rhythms of adolescent
82 students has spurred efforts around the world to implement or advocate for later school start
83 times for adolescent students.³⁶ These efforts have ranged from school scheduling decisions of
84 local school districts to proposed legislation at the state and national levels addressing secondary
85 school start times.³⁷ The medical and public health communities have endorsed these policy
86 efforts to promote good sleep health and academic performance in adolescent students,⁵⁻⁷ and
87 advocates promoting these policies have included health care and public health professionals,
88 scientists, educators, students, community organizations, lawmakers, and the media.³⁸

89 Despite the broad-based support for later daily school start times for adolescent students,
90 restoring later starting hours in modern U.S. public schools face numerous challenges. Among
91 the chief barriers are institutionalized components of modern school systems that were non-
92 existent in Terman and Hocking's time (*e.g.*, teachers' unions, multi-tiered bus schedules,
93 before- and after-school extracurricular activities), but have since been accepted by local school
94 officials, educators, and the communities they serve.^{39,40} Consequently, school and community
95 stakeholders have raised both well-considered and misguided objections to later school start time
96 policies.^{4,40-42} Moreover, addressing sleep deficiency in adolescent students historically has not
97 been a preeminent scheduling consideration for most school superintendents.⁴² In fact, some
98 school leaders simply have ignored or repudiated the relevant science on adolescent circadian
99 biology and health.⁴³

100 Efforts to increase knowledge and influence attitudes among school officials and the
101 general public about the need for later, healthier school start time policies may be the first step in
102 marshalling support for school start time change in a community.¹¹ The curriculum of budding
103 educators seldom includes sleep as a subject matter,⁴⁴ which contributes to ignorance of the topic
104 among school officials. High levels of advocacy and cooperation from school officials, however,
105 do not guarantee implementation and enforcement of healthy school hours in a community. The
106 best interests of children may be superseded by financial, logistical, contractual, or political
107 considerations in the community.^{4,11,40-42,45}

108 Given these competing interests, community education efforts need to be bolstered with
109 additional advocacy activities that deliver more assertive arguments and messages in favor of
110 later school start time policies. Existing laws and public policies pertaining to student and child
111 welfare are prime sources of rhetorical material for constructing such assertive arguments and
112 messages for use in various advocacy activities. In fact, incorporating law-based arguments and
113 messages into advocacy activities is a promising but under-utilized strategy to support
114 implementation of later school start time policies in communities throughout the U.S.

3. Legal Infrastructure Impacting School Start Times Policies

3.1 Legal Infrastructure Regulating Education in the United States

Education in the U.S. is governed by a complex scheme of interrelated federal, state, and local legal authorities covering issues ranging from high-level constitutional principles relating to equal educational opportunity to local school board rules controlling mundane matters such as transportation or class sizes.⁴⁶ Under American federalism principles, state and local governments have primary responsibility for regulating public education,ⁱⁱ and education law and policy questions in the U.S. were almost exclusively addressed at the state and local school board level until the mid-20th century. While state systems had much in common with each other, they also diverged considerably on many issues such as mandatory schooling ages, teacher qualifications, and policies for educating children with special needs. Beginning with the Civil Rights Movement in the 1950s and 1960s, the U.S. federal government began to exert greater influence on education law and policy as civil rights and equal opportunity issues in education came to the fore in American public discourse.ⁱⁱⁱ Based largely on its powers under the Commerce Clause^{iv} and the Taxing and Spending Clause^v of the U.S. Constitution, the federal government subsequently expanded its influence on education law and policy with the development of special education law in the late 1960s and early 1970s, the creation of the U.S. Department of Education in 1979, and the enactment of the No Child Left Behind Act (Pub. L. No. 107-110) in the 2000s.⁴⁷

ⁱⁱ The Tenth Amendment to the U.S. Constitution provides that powers “not delegated to the [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

ⁱⁱⁱ See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (holding that segregation of public education based solely on race violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution).

^{iv} Article I, Section 8, Clause 3 of the U.S. Constitution provides in part that Congress shall have the power to “regulate Commerce with foreign Nations, and among the several States[.]”

^v Article I, Section 8, Clause 1 of the U.S. Constitution provides in part that “Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises...[to provide for the] general Welfare of the United States[.]”

134 Despite the gradual shift towards greater federal involvement in education since the mid-
135 20th Century, education law and policy in the U.S. continues to be dominated by state
136 legislatures and local school boards.^{vi} Responsibility for education is still largely borne by
137 elected members of local school boards,^{vii} and “local control” remains a mantra of education law
138 today. School superintendents selected by local school boards serve as each jurisdiction’s
139 “instructional leader,” and most board members look to the superintendent for operational and
140 policy leadership at the local level.^{48,49} Within each local jurisdiction, administrators and
141 teachers at individual schools exercise significant discretion and decision-making authority
142 around issues such as student discipline and teacher evaluation. Meanwhile, criticism of the
143 increased federal influence on school law and policy has grown substantially in recent years.⁵⁰

144 The diversity and decentralization of law and policy approaches to delivering education
145 in the U.S. makes it difficult to reform practices nationwide, especially if the change sought
146 relates to how institutions operate.⁴⁶ Moreover, even when good laws or policies exist, effective
147 implementation and enforcement of these laws and policies may be hindered by multiple levels
148 of bureaucracy, decentralized governance of schools, lack of resources to implement changes, or
149 political forces opposing change. University of Minnesota researcher Kyla Wahlstrom
150 succinctly summarized the net effect of these circumstances in a recent statement to a newspaper
151 reporter:

152 [E]ducation is the second-slowest institution in the world to change. The slowest
153 is religion.⁵¹

154 Nevertheless, as discussed in the following sub-sections, certain legal principles and
155 responsibilities apply to public school systems and officials throughout the U.S. As used in this

^{vi} Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (“By and large, public education in our Nation is committed to the control of state and local authorities.”).

^{vii} Bd. of Educ. v. Pico, 457 U.S. 853, 863 (1982) (“[L]ocal school boards have broad discretion in the management of school affairs.”).

156 article, the term “public schools” is used to refer to public school systems and officials
157 collectively, and the term “school officials” include elected and non-elected individuals at the
158 state or local level responsible for overseeing or administering the operations of a public school
159 system or an individual public school.

160 **3.2 Legal Responsibilities of Public Schools**

161 **3.2.1 Responsibilities to Students**

162 Public school systems and officials in the U.S. have a broad set of responsibilities to
163 students under federal, state, and local laws. In addition, the U.S. legal system recognizes
164 education's impact upon the “social, economic, intellectual and psychological well-being” of
165 children.^{viii} Increasingly complex federal laws require public schools to improve educational
166 outcomes for students (20 U.S.C. § 6301 *et seq.*), protect student privacy (20 U.S.C. § 1232g),
167 provide bilingual education (20 U.S.C. § 1701 *et seq.*), and ensure that students with disabilities
168 receive a free appropriate public education (20 U.S.C. § 1400 *et seq.*). Public schools are also
169 required to provide students facing school discipline with fair treatment and procedural
170 safeguards consistent with constitutional due process principles.^{ix} Furthermore, public schools
171 have obligations under the U.S. Constitution and federal laws to ensure that school policies and
172 actions neither discriminate against students based on their race (*e.g.*, Civil Rights Act of 1964,
173 Pub. L. No. 88–352) or gender (*e.g.*, Title IX of the Education Amendments of 1972, Pub. L. No.
174 92-318), nor infringe on students’ rights to free expression and religious liberty.^x

175 At the state and local levels, public schools have a common law or statutory duty to
176 supervise students at school and protect them from foreseeable harms.^{46,52-54} This duty arises in

^{viii} Plyler v. Doe, 457 U.S. 202, 222 (1982).

^{ix} *E.g.*, Goss v. Lopez, 419 U.S. 565 (1975) (holding that students are entitled to notice and an opportunity to be heard when facing even short-term suspension or exclusion from school).

^x *E.g.*, Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) (holding that excluding students from school for non-disruptive speech violated their constitutionally protected free speech rights).

177 part from the compulsory nature of education: public schools become the custodians of students
178 who are required to attend, thereby giving rise to a special relationship which imposes on public
179 schools an affirmative legal duty to provide a reasonable standard of care to their students.
180 Courts have typically interpreted such a standard of care to include public school duties to
181 supervise, to warn of known risks or dangers, and to provide a safe environment for students.
182 These duties may extend beyond school grounds in some circumstances, such as where a school
183 system or officials undertake transportation of students, allow a known dangerous nearby
184 condition to continue unabated, or fail to adequately supervise campus departures.^{53,54} Public
185 schools also may be responsible for foreseeable student action arising from situations in which
186 the school system or officials have placed the student. However, public schools are not absolute
187 insurers of student health and safety. Furthermore, governmental and qualified immunity
188 doctrines can protect public school systems and officials from civil liability for their official
189 actions so long as their conduct does not violate a student's "clearly established" constitutional
190 or statutory rights.

191 Public schools may be subject to specific duties to promote and protect student welfare
192 through state or local laws. For example, Maine statutorily requires its state Board of
193 Occupational Safety and Health to "formulate and adopt reasonable rules to ensure safe and
194 healthful conditions for students in public educational facilities[,] including rules that "address
195 safety and health hazards created by the use of or exposure to equipment or material or the
196 exposure to other conditions within the educational facility that minors would be prohibited from
197 using or being exposed to in a work environment" (ME. REV. STAT. ANN. tit. 26, § 565-B).
198 Furthermore, the recent proliferation of laws, policies, and litigation around bullying and sexual
199 harassment issues has created important new legal obligations to improve school climate for

200 students.⁵⁵ Some states have also granted its children a statutorily protectable right to learn (*e.g.*,
201 MICH. COMP. LAWS § 380.1278). Such statutes and other theories regarding the legal
202 responsibility of public schools to provide students with an education have been at the center of
203 “educational malpractice” or “right to learn” litigation, in which student plaintiffs have claimed
204 that they were not given the education to which they were legally entitled.⁵⁶

205 **3.2.2 Responsibilities to the Community**

206 The obligations of public schools to the communities they serve are broader and less
207 obvious than the obligation of public schools to educate the communities’ students. Community
208 residents typically elect their local school board members. Critics have noted that unlike school
209 superintendents, school board members “usually have not possessed, nor felt that they needed,
210 deep knowledge of education”^{57(p6)} and can qualify for office simply by meeting local eligibility
211 criteria and conflict of interest rules for officeholders.⁵⁸ Some critics also allege that because
212 local school board members are often elected in off-year races, they may be less bound by their
213 constituents’ views.⁵⁹

214 **3.3 Legal Responsibilities of Parents and Guardians Concerning Children’s Education**

215 Parents and guardians also have legal obligations regarding the education of the children
216 under their care. Every state has compulsory education laws requiring parents and guardians to
217 ensure that their children are enrolled in and attend school.⁴⁷ Furthermore, parents and guardians
218 are legally responsible for important decisions about their children’s educational program and
219 may seek legal recourse to protect their children’s rights under various federal and state
220 education laws.^{60,61} In fact, many legally mandated educational responsibilities of public schools
221 to schoolchildren would be unenforceable without a parent or guardian to assert the child’s
222 rights.

223 3.4 Existing Laws and Public Policies Addressing Adolescent Sleep Health and Safety

224 Governments worldwide have implemented legal and policy interventions to address
225 health and safety hazards associated with poor sleep health in the populations they serve.^{61,62}
226 Many of these interventions specifically protect adolescents from these hazards. For example,
227 most U.S. states have enacted graduated driver-licensing laws that prohibit non-adult teenage
228 drivers from driving late at night while unsupervised by an adult, in part to reduce the risk of
229 sleepiness-related crashes involving teenage drivers.^{63,64} Furthermore, federal child labor laws
230 regulate the work hours of non-adult teenagers and include restrictions on daily, weekly, and
231 night-time work hours (*e.g.*, Fair Labor Standards Act of 1938, Pub. L. No. 75-718; 29 U.S.C.
232 213(c)(6)(A); and 29 C.F.R. §§ 570.35, 570.52(b)(2)).^{xi}

233 Some state courts have considered sleep health and safety issues in child welfare and
234 family law cases. For example, a Virginia court awarded primary custody of a young child to the
235 father after finding in part that the mother had emotionally abused the child by using
236 “punishment and reward tactics through sleep deprivation and food” to manipulate the child as
237 part of the mother’s campaign to alienate the child from the father.^{xii} Courts also have held that
238 parental neglect resulting in a child’s sleep deprivation brings a child within state court
239 dependency jurisdiction,^{xiii} and have recognized that sleep deprivation is a factor to be
240 considered when assessing the voluntariness of admissions made by children in delinquency
241 cases.^{xiv}

^{xi} In fact, the U.S. Secretary of Labor has determined that 14- and 15-year-old employees may not begin work before 7 a.m. (29 C.F.R. § 570.35(a)(6)) in part to ensure that their employment does not interfere with their schooling or their health and well-being (29 U.S.C. § 203(l) and 29 C.F.R. § 570.31).

^{xii} *Canedo v. Canedo*, No. 0851-12-4, 2013 WL 708085 (Va. Ct. App. Feb. 26, 2013).

^{xiii} *E.g., In re Padgett*, 577 S.E.2d 337, 340 (N.C. Ct. App. 2003).

^{xiv} *E.g., In re SLL*, 631 N.W.2d 775, 778–79 (Mich. Ct. App. 2001).

242 Federal law also protects children with a sleep-related disability from discrimination
243 based on their disability. Specifically, the Americans with Disabilities Act (ADA, Pub. L. No.
244 101-336 (1990), *amended by* Pub. L. No. 110-325 (2008)) prohibits governmental entities
245 (including public schools) from excluding individuals from participating in or receiving benefits
246 from public services, programs, or activities on the basis of a disability if the individual
247 otherwise would be eligible to participate in or receive such public services, programs, or
248 activities (42 U.S.C. §§ 12131 & 12132). The ADA defines “disability” to mean “a physical or
249 mental impairment that substantially limits one or more major life activities of such
250 individual[.]” where “major life activity” includes sleeping (42 U.S.C. § 12102(1)(A) & (2)(A)).
251 Thus, children with sleep disorders or other conditions interfering with their sleep arguably have
252 a disability as defined by the ADA and are therefore subject to the ADA’s protections.⁶¹

253 **4. Law-Based Arguments and Messages to Advocate for Later School Start Times**

254 The existing legal infrastructure regulating public education, child welfare, and
255 adolescent sleep health and safety provides prime material for constructing assertive, law-based
256 arguments and messages for future advocacy efforts promoting later school start time policies in
257 the U.S. These law-based arguments and messages could be used to leverage various legal risks
258 that public schools may potentially face if they continue their current early school start time
259 policies. They also could be used to remind decision-makers, the media, community
260 stakeholders, and residents of how later school start time policies are consistent with existing
261 laws, policies, societal values, and norms concerning child welfare in their jurisdictions.

262 **4.1 Litigation Arising from Implementation of Early School Start Time Policies**

263 To the American public, lawsuits are perhaps the most familiar application of law-based
264 arguments to advocate for a cause. In the face of opposition or apparent bad faith resistance by
265 local school officials, later school start time advocates acting on behalf of impacted students and
266 their parents may consider suing the recalcitrant public schools to effect policy change. If
267 advocates pursue litigation as a strategy, they need to make several strategic decisions with their
268 legal counsel, including: the legal basis or theory underlying the lawsuit, and whether this theory
269 derives from local, state, or federal law; identification of plaintiffs with standing to sue under the
270 chosen legal theory; whether to proceed with the lawsuit as a private or class action; the remedies
271 sought from the court; and anticipation of the legal and procedural obstacles that the defendant-
272 public schools will raise through counter-arguments and affirmative defenses. Some legal
273 theories, allegations, and defense arguments that may be raised in such hypothetical litigation are
274 summarized in **Table 1**. Although a comprehensive analysis of the arguments and outcomes of
275 these hypothetical cases is beyond the scope of this article, some of the legal and procedural

297 school district's early daily start time policy might argue that the policy effectively excludes
298 them from receiving the public service and benefit of a public education, in direct violation of
299 the ADA's prohibition against such disabilities-based discrimination. Moreover, the Fourteenth
300 Amendment to the U.S Constitution prohibits states from "depriv[ing] any person of life, liberty,
301 or property, without due process of law[.]" Public school students arguably have a life and
302 liberty interest in maintaining their personal welfare, and public schools arguably threaten these
303 interests by compelling students to be in an environment (*i.e.*, school) where they are subjected
304 to conditions (*i.e.*, early daily start times) that systematically compromise their welfare.
305 Consequently, students in such circumstances might argue that their constitutionally protected
306 substantive due process rights have been violated, especially if the early school start time policy
307 is not rationally connected to a legitimate government purpose or if implementation and
308 enforcement of the policy is deemed to be an arbitrary and capricious governmental act.

309 Absent such statutory or constitutional obligations, a lawsuit might rely on traditional tort
310 theories of liability to redress students' injuries. For example, students negatively impacted by
311 early school start time policies may argue that the school officials owed them a legal duty to
312 provide a safe and adequate environment to learn, that the school breached this duty by
313 implementing and enforcing its early start time policy and undermining the quality of the
314 learning environment, that this breach of duty caused the students to be injured (physically,
315 mentally, financially, *etc.*), and that the students were harmed (*i.e.*, suffered a loss) because of
316 their injuries resulting from the breach in duty. Based on these allegations, the students may
317 have a negligence-based cause of action which they can pursue to obtain monetary damages or
318 equitable relief (*e.g.*, a court order for school officials to stop a specified act or behavior) to
319 remedy their injuries resulting from the school officials' allegedly negligent activities.

320 Alternatively, students might base their lawsuit on intentional tort theories, arguing that the
321 school officials acted maliciously or with reckless disregard for the health, safety, or academic
322 performance of students by implementing and enforcing an early school start time policy despite
323 knowing about the adverse impacts of such policies on adolescent welfare. Given that actions
324 underlying a private lawsuit based in intentional tort are often also statutorily defined criminal
325 offenses, it is theoretically possible that state or local prosecutors may bring criminal charges
326 against school officials for recklessly implementing and enforcing early school start time policies
327 and endangering the health and safety of students.

328 In addition to substantive legal challenges to early school start time policies, procedural
329 legal challenges against how such policies are developed, implemented, and enforced may be
330 available. For example, if a state education department promulgated regulations concerning
331 school start time policies, the rule-making process would be subject to state administrative
332 procedures statutes and procedural due process constitutional guarantees. Violations of these
333 statutes and constitutional provisions may give rise to legal causes of action or other authorized
334 remedies and sanctions.

335 **4.1.2 Procedural and Legal Obstacles for Plaintiff-Students**

336 Any lawsuit challenging early school start time policies will inevitably encounter
337 procedural and legal obstacles. In responding to the plaintiff-students' lawsuit, the defendant-
338 public schools will deny the plaintiffs' allegations and raise various arguments as to why the
339 students' lawsuit should be dismissed on procedural grounds or why the public schools should
340 prevail on the merits. Plaintiffs would then have the burden of demonstrating why their lawsuit
341 should survive procedural challenges and ultimately why they should prevail on the merits while
342 rebutting the affirmative defenses and counter-arguments raised by the defendants.

343 **4.1.2.1 Procedural Challenges**

344 Before a lawsuit can proceed on the merits, it must meet certain threshold justiciability
345 requirements. For a case to be justiciable,^{65,68} the presiding court must not be offering an
346 advisory opinion, the plaintiff must have standing to sue (*i.e.*, a right to make a legal claim or
347 seek judicial enforcement of a duty or right), and the issues being litigated must be ripe (*i.e.*, the
348 facts underlying the litigation have developed sufficiently to allow a useful decision to be made)
349 but neither moot (*i.e.*, the litigation presents only an abstract question that does not arise from
350 existing facts or rights) nor related to political or administrative questions (*i.e.*, issues a court will
351 not consider because they involve the exercise of discretionary power by the legislative or
352 executive branches of government). The political-question doctrine may be especially relevant
353 in litigation arising from implementation of early school start time policies: the defendant-public
354 schools will argue that school start time policies are political and administrative questions with
355 which courts should not interfere.

356 Even if justiciability requirements are met, defendants can still have the lawsuit
357 dismissed by asserting that the plaintiffs have failed to state a claim upon which relief can be
358 granted (*e.g.*, Rule 12(b)(6) of the *Federal Rules of Civil Procedure*). For example, in response
359 to a student-filed lawsuit, school officials may argue the lawsuit should be dismissed because the
360 students have not alleged sufficient facts to make the case that they have suffered any injury
361 resulting from an early school start time policy that can be redressed under the law of the
362 relevant jurisdiction.

363 **4.1.2.2 Affirmative Defenses of Defendant-Public Schools**

364 If a lawsuit survives procedural challenges and is allowed to proceed, the defendants may
365 raise affirmative defenses against the plaintiffs' allegations. Affirmative defenses refer to

366 assertions of facts and arguments by the defendant which, if true, will negate a plaintiff's claim
367 of liability even if all the allegations in the plaintiff's lawsuit are true.⁶⁵ Certain affirmative
368 defenses are available to defendants for specific legal theories and causes of action pursued by
369 the plaintiff, depending on the specifics of the law in a jurisdiction. For example, in a
370 negligence-based case, the defendant may argue that the plaintiff's own negligent conduct
371 contributed to the plaintiff's injury, which should either bar or reduce any monetary damages
372 recovered by the plaintiff. Thus, if a student injured in a drowsy driving crash sued local school
373 officials for allegedly acting negligently by implementing and enforcing an early school start
374 time policy and thereby putting students at risk for sustaining a sleepiness-related injury, the
375 school officials could argue that the student contributed to his or her own injury by negligently
376 deciding to get behind the wheel and driving while drowsy.

377 In addition to affirmative defenses for specific causes of actions, various immunity-based
378 defenses may protect public school officials from liability arising from the execution of their
379 public duties. As governmental units, local school boards and state education departments may
380 enjoy immunity from tort liability for "discretionary acts" related to governmental planning or
381 decision-making, but not for "ministerial acts" related to governmental operations.⁵⁴(§§ 5:29 & 30)
382 Whether implementation and enforcement of an early school start time policy constitutes a
383 discretionary or ministerial act would likely be a disputed issue during litigation. Even in
384 jurisdictions that have abolished state or local governmental tort immunity, some courts have
385 applied a "public duty" doctrine to limit governmental liability so that a governmental duty owed
386 to the public at large (*e.g.*, duty of the police to protect citizens) is not owed to a specific
387 individual unless a special relationship exists between the governmental entity and the
388 individual.⁶⁹ Such a special relationship may be demonstrated where the governmental entity

389 assumes an affirmative duty to act on behalf of an individual, the agents of the governmental
390 entity know that governmental inaction could lead to harm to the individual, the governmental
391 agents have had some direct contact with the individual, and the individual justifiably relies on
392 the governmental entity's assumption of duty to act. By legally requiring students to attend
393 school, the public duty exception to governmental tort immunity may not be available as an
394 affirmative defense for local school boards and state education agencies in a tort-based lawsuit
395 arising from injuries related to implementation and enforcement of early school start time
396 policies.

397 Individual public school officials may enjoy official immunity from tort liability arising
398 from their "discretionary act" of implementing and enforcing early start time policies as part of
399 their official duties, unless the act is done maliciously or for an improper purpose.⁵⁴(§ 5:32)
400 Furthermore, individual public school officials may enjoy qualified immunity from individual
401 civil liability arising from their implementation and enforcement of early start time policies,
402 unless such conduct violates a clear statutory or constitutional right enjoyed by the plaintiffs in a
403 particular jurisdiction. Thus, absent a state statute or constitutional provision that clearly
404 obligates school officials to avoid actions that harm student welfare, qualified immunity may
405 attach to negligence or intentional tort cases arising from an injury related to an early school start
406 time policy.

407 ***4.1.2.3 Defendant-Public Schools' Counter-Arguments on the Merits***

408 Aside from procedural challenges and affirmative defenses, school officials may raise
409 various counter-arguments to challenge the legal merits of a lawsuit arising from the
410 implementation of an early school start time policy. Perhaps the most basic of these counter-
411 arguments would be that the defendant-public schools have not violated any legal obligation or

412 restriction by implementing and enforcing early school start time policies, if any such obligation
413 or restriction even exists. Thus, for lawsuits based on statutory violations, defendants may argue
414 that the statute underpinning the plaintiffs' case is inapplicable to the case at bar, or that
415 defendants' conduct did not constitute a violation of the statute. Similar counter-arguments may
416 be raised to challenge allegations of constitutional violations. In addition, defendants may argue
417 that an alleged constitutional violation passes legal muster under an established standard of
418 judicial review favorable to the public schools (*e.g.*, rational basis review, whereby a
419 governmental action passes constitutional muster if it is rationally related to a legitimate
420 governmental purpose). For tort-based litigation, school officials may argue that they are not
421 absolute insurers of student welfare and that they therefore have a limited (if any) legal duty to
422 protect students from health and safety hazards away from school grounds or outside of school
423 hours. The school officials would further argue that ensuring students are subject to school start
424 times that are optimal for student health, safety, and academic performance falls outside the
425 scope of any legal duty public schools may have to students.

426 Another significant counter-argument school officials could raise against plaintiff
427 allegations, particularly in tort-based litigation, is that there is an insufficient causal link between
428 the school officials' implementation and enforcement of an early start time policy and the
429 students' alleged injury. In negligence cases, liability applies only for injuries that are
430 reasonably foreseeable or where the risk of injury is actually or constructively known to
431 defendants and is preventable by reasonable supervision or care.^{67(ch. 12), 70(pp245-249)} Sleepiness-
432 related injuries among adolescents due to their delayed circadian rhythms and consequent sleep
433 deprivation are reasonably foreseeable given the established science on adolescent circadian
434 biology and associated health and safety risks. Nevertheless, school officials may argue that

435 independent intervening factors break the causal link between implementation of an early start
436 time policy and a student's injury, thereby absolving the school officials from liability for the
437 student's injury. For example, a car crash involving a sleepy high school student driver could be
438 attributed to causes entirely unrelated to the early start time policy implemented and enforced by
439 the defendant-public schools, such as poor road and weather conditions at the time of the crash
440 or negligence on the part of the student driver or other motorists involved in the crash. Cases
441 involving sleepiness-related incidents on school grounds during school hours (*e.g.*, where
442 students who are so sleepy in class that they fail to learn the material taught them and their
443 academic performance is adversely impacted) also could be defended in this manner, as such
444 incidents could be attributed to independent causes unrelated to an early start time policy such as
445 stressful experiences in the students' personal lives outside of school.

446 **4.2 Law-Based Arguments and Messaging for Non-Litigation Advocacy Activities**

447 The difficulty facing advocates who want to challenge early school start time policies
448 through litigation is reflected in the fact that no U.S. public schools have been sued successfully
449 and held liable for student injuries resulting from early school start time policies. Thus, despite
450 the breadth of possible legal theories available for challenging early school start time policies
451 through litigation, ultimate success in such endeavors seems improbable as a practical matter.^{xvi}
452 Advocates may, however, pursue or threaten litigation for strategic purposes such as generating
453 publicity about an issue or incentivizing school officials to take pre-emptive policy action rather
454 than to attain desired policy outcomes directly. Litigation introduces an adversarial approach to
455 the policy dispute that may encourage advocates and school officials to work harder to find

^{xvi} However, the Supreme Court of Michigan recently remanded for reconsideration by a lower appellate court the question of whether a high school coach's directive to enter a roadway during a pre-dawn practice run proximately caused severe injury to a student-athlete struck by a motorist. *Ray v. Swager*, No. 152723, 2017 WL 3254724 (Mich. July 31, 2017).

456 common ground and expeditiously resolve the dispute. On the other hand, an unsuccessful
457 lawsuit could easily result in substantial costs for the school district and stiffen resistance from
458 school officials. Furthermore, litigation approaches to other areas of education reform have had
459 inconsistent and unsatisfactory results (see **footnote xv**).^{71,72}

460 Despite the disadvantages of advocating for later school start time policies through
461 litigation, the arguments raised in litigation and their component language and analyses can be
462 repackaged into law-based messages for use in public debates and other advocacy activities to
463 promote later school start time policies. Even if a court finds school start time policies to be a
464 non-justiciable political question involving the exercise of discretionary power by the executive
465 or legislative branches of government,⁶⁵ the legal arguments raised in litigation may provide
466 powerful political rhetoric for the debates concerning such policies and related legislation and
467 regulations that might be considered at the local, state, or even regional or federal levels. These
468 debates could take place privately through correspondence or meetings with individual decision-
469 makers (*e.g.*, elected officials, appointed officials), or publicly before policy-making bodies (*e.g.*,
470 legislatures, executive branch agencies, local school boards) or through communications
471 channels that influence public perceptions and opinion (*e.g.*, news media, social media,
472 community organizations). Some examples of how law-based messages might be applied
473 strategically to advocate for later school start time policies, including hypothetical arguments to
474 advance these strategies (see **Table 2**), are presented in the following sub-sections.

475 **4.2.1 Emphasizing Consistency with Existing Child Welfare Laws and Policies**

476 One particularly potent law-based messaging strategy that could be applied to non-
477 litigation advocacy activities would emphasize how later school start time policies are consistent
478 with existing practices concerning child welfare that a given jurisdiction has long adopted as a

479 matter of public policy and enforced as a matter of law. For example, if governmental
480 authorities in a jurisdiction previously have implemented policies, rules, or laws aimed at
481 protecting adolescents from the dangers to their welfare posed by sleep deficiency (see **Section**
482 **3.4**), advocates could argue that implementation of policies, rules, or laws relating to later school
483 start times would be entirely consistent with the jurisdiction's existing public policy on sleep
484 health and adolescent welfare. This argument becomes especially potent if the existing policies,
485 rules, or laws: (1) have been developed and enforced by multiple branches of government (*i.e.*,
486 legislative, executive, and judicial) in a jurisdiction; (2) apply to voluntary adolescent activities
487 (*e.g.*, employment, driving) rather than mandatory adolescent activities (*e.g.*, attending school);
488 or (3) value adolescent welfare over other interests in the community (*e.g.*, business interests).
489 Such law-based arguments and messages may be particularly effective when advocating for
490 legislation, which is arguably the clearest and least impeachable legal means of achieving later
491 school start times for adolescent students as a matter of public policy.

492 **4.2.2 Emphasizing Consistency with Existing Legal Responsibilities**

493 Law-based messages also can be used to emphasize how later school start time policies
494 are consistent with the existing legal responsibilities of public schools and other governmental
495 authorities in a jurisdiction. For example, advocates can use a negligence framework to advance
496 arguments about how later school start times are consistent with the "duty of care" public school
497 systems and officials owe their students, and how failure to implement a later start time policy
498 causes harm to students (see **Sections 3.2 and 4.1.1**). Such law-based arguments can be applied
499 in a manner less threatening and confrontational than litigation to persuade relevant decision-
500 makers to support later school start time policies and to empower them to implement and enforce
501 such policies.

522

5. Conclusion

523

As public awareness of the detrimental effects of early school start times on

524

adolescent welfare increases and calls to action to promote the implementation of later start time

525

policies proliferate across the U.S., advocates will need to adopt a multi-pronged strategy for

526

their efforts. One such strategy prong could involve developing and applying law-based

527

arguments and messages in support of later school start time policies. Although litigation would

528

be the most obvious operationalization of this strategy, law-based arguments and messages could

529

be readily applied to other types of advocacy activities in ways that leverage the existing legal

530

infrastructure regulating public education and child welfare in the U.S. and that resonate with

531

existing societal values and norms that prioritize child welfare over other community interests.

532

This approach may be especially effective for legislative advocacy, which may be the most

533

promising legal means of achieving later school start times for adolescent students as a matter of

534

public policy in the U.S.

535

Acknowledgments

536

537

538

539

540

541

542

The authors thank the following individuals for their assistance and support during the preparation of this article: Christie Chung, Faiza Hasan, Lukas Kaczmarek, William Lauber, Lisa Piccinini, and Emily Rosenberg from the University of Maryland Francis King Carey School of Law; Preeti Emrick, Christine Gentry, and Trudy Henson from the University of Maryland Center for Health and Homeland Security; Susan McCarty from the Thurgood Marshall Law Library at the University of Maryland, Baltimore; and Luwana Kotchian from Drake University Law School.

References

- 543
544
- 545 1. Wheaton AG, Chapman DP, Croft JB. School Start Times, Sleep, Behavioral, Health, and
546 Academic Outcomes: A Review of the Literature. *Journal of School Health*.
547 2016;86(5):363-381.
 - 548 2. Morgenthaler TI, Hashmi S, Croft JB, Dort L, Heald JL, Mullington J. High School Start
549 Times and the Impact on High School Students: What We Know, and What We Hope
550 to Learn. *Journal of Clinical Sleep Medicine*. 2016;12(12):1681-1689.
 - 551 3. Kelley P, Lee C. Later School Start Times in Adolescence: Time for Change. In. Denver,
552 CO: Education Commission of the States; 2014.
 - 553 4. Owens J, Droblich D, Baylor A, Lewin D. School Start Time Change: An In-Depth
554 Examination of School Districts in the United States. *Mind, Brain, and Education*.
555 2014;8(4):182-213.
 - 556 5. Adolescent Sleep Working Group, Committee on Adolescence, Council on School
557 Health. School Start Times for Adolescents. *Pediatrics*. 2014;134(3):642-649.
 - 558 6. Wheaton AG, Ferro GA, Croft JB. School Start Times for Middle School and High
559 School Students — United States, 2011–12 School Year. *Morbidity and Mortality Weekly*
560 *Report*. 2015;64(30):809-813.
 - 561 7. Watson NF, Martin JL, Wise MS, et al. Delaying Middle School and High School Start
562 Times Promotes Student Health and Performance: An American Academy of Sleep
563 Medicine Position Statement. *Journal of Clinical Sleep Medicine*. 2017;13(4):623-625.
 - 564 8. Start School Later. Success Stories. 2017; [http://www.startschoollater.net/success-](http://www.startschoollater.net/success-stories.html)
565 [stories.html](http://www.startschoollater.net/success-stories.html).
 - 566 9. Start School Later. Case Studies. 2017; <http://www.startschoollater.net/case-studies.html>.
 - 567 10. Jacob BA, Rockoff JE. Organizing Schools to Improve Student Achievement:
568 Start Times, Grade Configurations, and Teacher Assignments. In. Washington, DC: The
569 Hamilton Project, Brookings; 2011.
 - 570 11. Wahlstrom K. School Start Times and Sleepy Teens. *Archives of Pediatrics and*
571 *Adolescent Medicine*. 2010;164(7):676-677.
 - 572 12. Terman LM, Hocking A. The sleep of school children, its distribution according to age,
573 and its relation to physical and mental efficiency: Part I. The Distribution of Sleep
574 According to Age. *Journal of Educational Psychology*. 1913;4(3):138-147.
 - 575 13. Terman LM, Hocking A. The sleep of school children, its distribution according to age,
576 and its relation to physical and mental efficiency: Part III. The conditions of children's
577 sleep. *Journal of Educational Psychology*. 1913;4(5):269-282.

- 578 14. Fischel WA. Neither “Creatures of the State” nor “Accidents of Geography”: The
579 Creation of American Public School Districts in the Twentieth Century. *University of*
580 *Chicago Law Review*. 2010;77:177-199.
- 581 15. Gray L, Bitterman A, Goldring R, Broughman S. *Characteristics of Public School*
582 *Districts in the United States: Results From the 2011–12 Schools and Staffing Survey*
583 *(NCES 2013–311)*. Washington, DC: National Center for Education Statistics, U.S.
584 Department of Education;2013.
- 585 16. Wolf-Meyer MJ. *The Slumbering Masses: Sleep, Medicine, and Modern American Life*.
586 Minneapolis, MN: University of Minnesota Press; 2012.
- 587 17. Carskadon M, Acebo C. Historical view of high school start time: preliminary results.
588 *Sleep Research*. 1997;26:184.
- 589 18. O’Malley EB, O’Malley MB. School Start Time and Its Impact on Learning and
590 Behavior. In: Ivanenko A, ed. *Sleep and Psychiatric Disorders in Children and*
591 *Adolescents*. New York, NY: Informa Healthcare; 2008:79-94.
- 592 19. Mitru G, Millrood DL, Mateika JH. The Impact of Sleep on Learning and Behavior in
593 Adolescents. *Teachers College Record*. 2002;104(4):704-726.
- 594 20. Miller NL, Tvaryanas AP, Shattuck LG. Accommodating Adolescent Sleep-Wake
595 Patterns: The Effects of Shifting the Timing of Sleep on Training Effectiveness. *Sleep*.
596 2012;35(8):1123-1136.
- 597 21. Owens J. Insufficient Sleep in Adolescents and Young Adults: An Update on Causes and
598 Consequences. *Pediatrics*. 2014;134(3):e921-e932.
- 599 22. Raine A, Venables PH. Adolescent daytime sleepiness as a risk factor for adult crime.
600 *Journal of Child Psychology and Psychiatry*. 2017;58(6):728-735.
- 601 23. Wahlstrom KL, Berger AT, Widome R. Relationships between school start time, sleep
602 duration, and adolescent behaviors. *Sleep Health*. 2017;3(3).
- 603 24. McKeever PM, Clark L. Delayed high school start times later than 8:30 AM and impact
604 on graduation rates and attendance rates. *Sleep Health*. 2017;3(2):119-125.
- 605 25. Thacher PV, Onyper SV. Longitudinal Outcomes of Start Time Delay on
606 Sleep, Behavior, and Achievement in High School. *Sleep*. 2016;39(2):271–281.
- 607 26. Gariépy G, Janssen, Ian, Sentenac, Mariane, Elgar FJ. School start time and sleep in
608 Canadian adolescents. *Journal of Sleep Research*. 2016.
- 609 27. Edwards F. Early to rise? The effect of daily start times on academic performance.
610 *Economics of Education Review*. 2012;31(6):970-983.

- 611 28. Danner F, Phillips B. Adolescent Sleep, School Start Times, and Teen Motor
612 Vehicle Crashes. *Journal of Clinical Sleep Medicine*. 2008;4(6):533-535.
- 613 29. Vorona RD, Szklo-Coxe M, Wu A, Dubik M, Zhao Y, Ware JC. Dissimilar Teen Crash
614 Rates in Two Neighboring Southeastern Virginia Cities with Different High School Start
615 Times. *Journal of Clinical Sleep Medicine*. 2011;7(2):145-151.
- 616 30. Vorona RD, Szklo-Coxe M, Lamichhane R, Ware JC, McNallen A, Leszczyszyn D.
617 Adolescent Crash Rates and School Start Times in Two Central Virginia Counties, 2009-
618 2011: A Follow-up Study to a Southeastern Virginia Study, 2007-2008. *Journal of*
619 *Clinical Sleep Medicine*. 2014;10(11):1169-1177.
- 620 31. Wheaton AG, Olsen EOM, Miller GF, Croft JB. Sleep Duration and Injury-Related Risk
621 Behaviors Among High School Students — United States, 2007–2013. *Morbidity and*
622 *Mortality Weekly Report*. 2016;65(13):337-341.
- 623 32. Hagenauer MH, Perryman JI, Lee TM, Carskadon MA. Adolescent Changes in the
624 Homeostatic and Circadian Regulation of Sleep. *Developmental Neuroscience*.
625 2009;31(4):276-284.
- 626 33. American Academy of Sleep Medicine. Health Advisory: Teen Sleep Duration. 2016.
627 [http://www.aasmnet.org/resources/pdf/pressroom/teen-sleep-duration-](http://www.aasmnet.org/resources/pdf/pressroom/teen-sleep-duration-recommendation.pdf)
628 [recommendation.pdf](http://www.aasmnet.org/resources/pdf/pressroom/teen-sleep-duration-recommendation.pdf).
- 629 34. Gibson ES, Powles AP, Thabane L, et al. "Sleepiness" is serious in adolescence: Two
630 surveys of 3235 Canadian students. *BMC Public Health*. 2006;6:116.
- 631 35. Winsler A, Deutsch A, Vorona RD, Payne PA, Szklo-Coxe M. Sleepless in Fairfax: The
632 Difference One More Hour of Sleep Can Make for Teen Hopelessness, Suicidal Ideation,
633 and Substance Use. *Journal of Youth and Adolescence*. 2015;44(2):362-378.
- 634 36. Kelley P, Lockley SW, Foster RG, Kelley J. Synchronizing education to adolescent
635 biology: 'let teens sleep, start school later'. *Learning, Media and Technology*.
636 2015;40(2):210-226.
- 637 37. Start School Later. Current Legislation. 2017;
638 <http://www.startschoollater.net/legislation.html>.
- 639 38. Start School Later. Start School Later at Work. 2017;
640 <http://www.startschoollater.net/start-school-later-at-work.html>.
- 641 39. Sable J, Plotts C, Mitchell L, Chen C-S. *Characteristics of the 100 Largest*
642 *Public Elementary and Secondary School Districts in the United States: 2008–09*
643 *(NCES 2011-301)*. Washington, DC: National Center for Education Statistics,
644 U.S. Department of Education;2010.

- 645 40. Barnes M, Davis K, Mancini M, Ruffin J, Simpson T, Casazza K. Setting Adolescents Up
646 for Success: Promoting a Policy to Delay High School Start Times. *Journal of School*
647 *Health*. 2016;86(7):552-557.
- 648 41. Wahlstrom KL. Accommodating the Sleep Patterns of Adolescents within Current
649 Educational Structures: An Uncharted Path. In: Carskadon MA, ed. *Adolescent Sleep*
650 *Patterns: Biological, Social, and Psychological Influences*. New York, NY: Cambridge
651 University Press; 2002:172-197.
- 652 42. Wolfson AR, Carskadon MA. A Survey of Factors Influencing High School Start Times.
653 *NASSP Bulletin*. 2005;89(642):47-66.
- 654 43. Nolan D. Incognizant “Educators.” *The Impact of School Start Times on Adolescent*
655 *Health and Academic Performance*. 2011-2017.
656 <https://schoolstarttime.org/2011/09/23/oblivious-educators/>.
- 657 44. Wolfson AR. Bridging the Gap between Research and Practice: What Will Adolescents'
658 Sleep-Wake Patterns Look Like in the 21st Century? In: Carskadon MA, ed. *Adolescent*
659 *Sleep Patterns: Biological, Social, and Psychological Influences*. New York, NY:
660 Cambridge University Press; 2002:198-219.
- 661 45. Wahlstrom KL. The Prickly Politics of School Starting Times. *Phi Delta Kappan*.
662 1999;80(5):344-347.
- 663 46. Biegel S, Kim R, Welner K. *Education and the Law*. 4th ed. St. Paul, MN: West
664 Academic Publishing; 2016.
- 665 47. Yudof MG, Levin B, Moran RF, Ryan JE, Bowman KL. *Educational Policy and the Law*.
666 5th ed. Belmont, CA: Wadsworth Publishing; 2012.
- 667 48. Murphy J, Hallinger P. The Superintendent as Instructional Leader: Findings
668 from Effective School Districts. *Journal of Educational Administration*. 1986;24(2):213-
669 236.
- 670 49. Hess FM, Meeks O. *School Boards Circa 2010: Governance in the Accountability Era*.
671 Alexandria, VA: National School Boards Association;2010.
- 672 50. Ravitch D. *The Death and Life of the Great American School System: How Testing and*
673 *Choice Are Undermining Education*. New York, NY: Basic Books; 2010.
- 674 51. Ross A. Why are teens going to school so early? Research shows educators may need a
675 wake-up call. *Courier-Journal*. July 19, 2017. [http://www.courier-](http://www.courier-journal.com/story/news/education/back-to-school/2017/07/19/jcps-other-districts-starting-too-early-teens-research-may-wake-up-call/440533001/)
676 [journal.com/story/news/education/back-to-school/2017/07/19/jcps-other-districts-](http://www.courier-journal.com/story/news/education/back-to-school/2017/07/19/jcps-other-districts-starting-too-early-teens-research-may-wake-up-call/440533001/)
677 [starting-too-early-teens-research-may-wake-up-call/440533001/](http://www.courier-journal.com/story/news/education/back-to-school/2017/07/19/jcps-other-districts-starting-too-early-teens-research-may-wake-up-call/440533001/).
- 678 52. Norris DA. Tort liability of public schools and institutions of higher learning. In:
679 *American Law Reports*. Vol 160. Rochester, NY: Lawyers Co-operative Publishing Co.;
680 1946:7-246.

- 681 53. Korpela AE. Tort liability of public schools and institutions of higher learning for injuries
682 resulting from lack or insufficiency of supervision. In: *American Law Reports 3d Series*.
683 Vol 38. Rochester, NY: Lawyers Co-operative Publishing Co.; 1971:830-900.
- 684 54. Lentz MA. Chapter 5. Negligence and Liability. In: *Lentz School Security*. New York,
685 NY: Thomson Reuters; 2016.
- 686 55. Weddle DB. Bullying in Schools: The Disconnect Between Empirical Research and
687 Constitutional, Statutory, and Tort Duties to Supervise. *Temple Law Review*.
688 2004;77:641-699.
- 689 56. Standler RB. Educational Malpractice Law in the USA. 2013.
690 <http://www.rbs2.com/edumal3.pdf>.
- 691 57. Task Force on School District Leadership. *Leadership for Student Learning:
692 Restructuring School District Leadership*. Washington, DC: Institute for Educational
693 Leadership;2001.
- 694 58. Kaufman MJ, Kaufman SR. *Education Law, Policy, and Practice: Cases and Materials*.
695 2nd ed. New York, NY: Aspen Publishers; 2009.
- 696 59. Miller M. First, Kill All the School Boards: A modest proposal to fix the schools. *The
697 Atlantic*. January/February 2008.
698 [https://www.theatlantic.com/magazine/archive/2008/01/first-kill-all-the-school-
699 boards/306579/](https://www.theatlantic.com/magazine/archive/2008/01/first-kill-all-the-school-boards/306579/).
- 700 60. Schlueter LL. Parental Rights in the Twenty-First Century: Parents as Full Partners in
701 Education. *St Mary's Law Journal*. 2001;32(4):611-808.
- 702 61. Lee CJ, Jones CB, Rajaratnam SMW. Legal Implications of Circadian Rhythm Sleep
703 Disorders. In: *Reference Module in Neuroscience and Biobehavioral Psychology*:
704 Elsevier; 2017.
- 705 62. Lee CJ, Sanna RA, Czeisler CA. Public Policy, Sleep Science, and Sleep Medicine. In:
706 Kushida CA, ed. *Encyclopedia of Sleep*. Vol 2. Waltham, MA: Academic Press;
707 2013:156-166.
- 708 63. Rajaratnam SMW, Landrigan CP, Wang W, Kaprielian R, Moore RT, Czeisler CA. Teen
709 Crashes Declined After Massachusetts Raised Penalties for Graduated Licensing Law
710 Restricting Night Driving. *Health Affairs*. 2015;34(6):963-970.
- 711 64. Governors Highway Safety Association. State Laws by Issue: Teen and Novice Drivers.
712 2016; <http://www.ghsa.org/state-laws/issues/Teen-and-Novice-Drivers>.
- 713 65. Garner BA, editor. *Black's Law Dictionary*. 10th ed. St. Paul, MN: Thomson Reuters;
714 2014.

- 715 66. Parness JA. American State Constitutional Equalities. *Gonzaga Law Review*.
716 2010;45(3):773-795.
- 717 67. American Law Institute. *Restatement (Second) of Torts*. St. Paul, MN: American Law
718 Institute Publishers; 1965.
- 719 68. Wright CA, Miller AR, Cooper EH, et al. § 3529 Justiciability. In: *Federal Practice and*
720 *Procedure*. Vol 13. 3rd ed. St. Paul, MN: West Publishing; 2008.
- 721 69. Derrick JH. Modern status of rule excusing governmental unit from tort liability on
722 theory that only general, not particular, duty was owed under circumstances. In:
723 *American Law Reports 4th Series*. Vol 38. Rochester, NY: Lawyers Co-
724 operative Publishing Co.; 1985:1194-1205.
- 725 70. Prosser WL. *Handbook of the Law of Torts*. 4th ed. St. Paul, MN: West Publishing; 1971.
- 726 71. Heise MR. Litigated Learning and the Limits of Law. *Vanderbilt Law Review*.
727 2004;57(6):2417-2461.
- 728 72. Pudelski S. *Rethinking Special Education Due Process: A proposal for the next*
729 *reauthorization of the Individuals with Disabilities Education Act*. Alexandria, VA:
730 American Association of School Administrators;2016.
- 731 73. Lee CJ. Sleep: a human rights issue. *Sleep Health*. 2016;2(1):6-7.
- 732 74. Krueger J. High School Start Times and Healthy Sleep. *Public Health Law Blog*. 2015.
733 [https://www.networkforphl.org/the_network_blog/2015/03/03/553/high_school_start_tim](https://www.networkforphl.org/the_network_blog/2015/03/03/553/high_school_start_times_and_healthy_sleep)
734 [es_and_healthy_sleep](https://www.networkforphl.org/the_network_blog/2015/03/03/553/high_school_start_times_and_healthy_sleep).
- 735 75. American Academy of Sleep Medicine. *International Classification of Sleep Disorders*.
736 3d ed. Darien, IL: American Academy of Sleep Medicine; 2014.
737

Table 1. *Litigation Arising from Implementation of Early School Start Time Policies: Hypothetical Allegations and Defenses*

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
FEDERAL CONSTITUTIONAL & STATUTORY VIOLATION	<ul style="list-style-type: none"> Substantive due process violation.^a Federal civil rights violation.^b 	<ul style="list-style-type: none"> By implementing and enforcing an early school start time policy, the public schools have created a dangerous educational environment and deprived students of their life and liberty interest in maintaining their personal welfare. The early school start time policy is neither necessary to advance a compelling government purpose nor rationally related to a legitimate government interest. Consequently, implementation and enforcement of the early school start time policy violates students' due process rights under the U.S. Constitution and civil rights. 	Strike down the existing early school start time policy as constitutionally invalid and in violation of students' civil rights.	<ul style="list-style-type: none"> Case is non-justiciable (e.g., students have no standing to sue; school start time policy is a political question). Early school start time policy is rationally related to a legitimate government interest and not an arbitrary governmental act.

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
FEDERAL & STATE CONSTITUTIONAL VIOLATION FEDERAL STATUTORY VIOLATION	<ul style="list-style-type: none"> Federal and state Equal Protection violation.^c Americans with Disabilities Act (ADA) violation. 	<ul style="list-style-type: none"> School officials have discriminated against students with a sleep-related disability by implementing and enforcing an early school start time policy. The discriminatory treatment school officials have given to students with a sleep-related disability is neither necessary to advance a compelling government purpose nor rationally related to a legitimate government interest. 	<ul style="list-style-type: none"> Strike down the existing early school start time policy as constitutionally invalid. Compel school officials to adopt later school start times as a reasonable accommodation for students with sleep-related disabilities. 	<ul style="list-style-type: none"> School officials' conduct was not discriminatory on the basis of a disability. Early school start time policy is rationally related to a legitimate government interest and not an arbitrary governmental act. Adopting a later school start time policy is an overly burdensome remedy (<i>e.g.</i>, the accommodation requested is unreasonable).
STATE CONSTITUTIONAL VIOLATION	Violation of state constitution provision granting certain rights to students relating to the adequacy of their education.	Implementation and enforcement of an early school start time policy infringes on students' constitutionally protected right to an adequate education.	Strike down the existing early school start time policy as constitutionally invalid.	<ul style="list-style-type: none"> Case is non-justiciable (<i>e.g.</i>, students have no standing to sue; school start time policy is a political question). Early school start time policy does not infringe on any constitutionally protected right of students.

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
STATE STATUTORY VIOLATION	Violation of state statute imposing duties on school officials to protect student welfare.	By implementing and enforcing an early school start time policy, school officials have injured students in violation of a state statutory duty to protect student welfare.	Statutory remedies.	<ul style="list-style-type: none"> No statutory violation occurred. Students' injuries occurred independently of the actions of the public schools.
ADMINISTRATIVE LAW VIOLATION	<ul style="list-style-type: none"> Violation of state administrative procedures act. Violation of constitutional procedural due process guarantees.^d 	Decision of state education department to promulgate regulations on school start times without public notice or opportunity for public comment violates state administrative procedures act or constitutional guarantees to procedural due process.	Regulations invalidated or sent back to administrative agencies for further proceedings consistent with the applicable legal authorities.	Adequate public notice and opportunity for public comment was provided before the regulations were promulgated.

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
NEGLIGENCE ^e	<p>School officials acted negligently in implementing and enforcing an early school start time policy despite being aware of the research on the adverse impacts of early school start times, resulting in students' injuries related to:</p> <ul style="list-style-type: none"> • A sleepiness-related incident while driving to or from school. • A sleepiness-related incident at school during regular school hours. • Adverse health outcomes for the students. • Adverse educational outcomes for the students (<i>i.e.</i>, educational malpractice). 	<p>Duty: School officials owed students a legal duty (<i>e.g.</i>, duty to protect students from foreseeable health and safety risks related to school activities).</p> <p>Breach: School officials breached their legal duty to students by implementing and enforcing an early school start time policy and thus failing to exercise reasonable care.</p>	<ul style="list-style-type: none"> • Monetary damages (<i>i.e.</i>, to make the students “whole” by putting them in the same position as if the tort^e had not occurred). • Equitable relief (<i>e.g.</i>, an injunction against enforcement of early school start time policies). 	<p>School officials did not have a legal duty to ensure that students were subject to safe and healthy school start times, either because applicable legal authorities and precedents are silent on the issue or explicitly rule out the existence of such a duty.</p> <ul style="list-style-type: none"> • No breach of duty because under applicable legal authorities and precedents, the extent and scope of the duty does not include ensuring that students are subject to safe and healthy school start times. • Reasonable care was exercised in adopting the early school start time policy or refusing to adopt a later school start time policy.

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
		<p>Causation: The school officials' breach of duty caused students to be injured (physically, mentally, financially, <i>etc.</i>).</p>		<ul style="list-style-type: none"> • Students' injuries related to early school start time policy were not sufficiently foreseeable or preventable by school officials exercising reasonable care or supervision. • Insufficient nexus between breach of duty and students' injuries. • Students did not suffer an actual loss or a loss that can be remedied under the law. • Contributory or comparative negligence of the students. • Qualified immunity for school officials. • Governmental immunity.
		<p>Harm: Students suffered a loss because of their injuries resulting from the school officials' breach of duty.</p>		

Legal Theory	HYPOTHETICAL EXAMPLE			
	Students, Parents & Advocates for Later School Start Times (<i>Plaintiffs</i>)			Public Schools (<i>Defendants</i>)
	<i>Sample Pleading or Cause of Action</i>	<i>Plaintiff Allegations</i>	<i>Prayer for Relief</i>	<i>Defense Arguments</i>
INTENTIONAL TORT^e	<ul style="list-style-type: none"> • Intentional infliction of emotional distress. • Other intentional tort provided for by statute. 	School officials acted with reckless disregard for the health, safety, and education of students by implementing and enforcing an early school start time policy despite knowing and understanding the research on the adverse impacts of early school start times.	<ul style="list-style-type: none"> • Monetary damages. • Equitable relief. • Statutorily authorized civil penalties. 	<ul style="list-style-type: none"> • School officials' conduct does not meet the intention requirement of the tort^e under applicable legal authorities and precedents. • Students did not suffer an actual loss or a loss that can be remedied under the law. • Qualified immunity of school officials. • Governmental immunity.
CRIMINAL OFFENSE	Violating a statute criminalizing acts demonstrating a reckless disregard for the health and safety of minors.	School officials acted with reckless disregard for the health and safety of students by implementing and enforcing an early school start time policy despite knowing and understanding the research on the adverse impacts of early school start times.	Statutorily authorized criminal sanctions.	School officials' conduct does not meet the physical or mental elements of the crime under applicable legal authorities and precedents.

Note. The hypothetical examples are for illustrative purposes only and are not intended to provide advice about or reflect the law in any federal, state, or local jurisdiction. Variations in the law may exist between jurisdictions. The term “public schools” refers to

public school systems and officials collectively, and the term “school officials” include elected and non-elected individuals at the state or local level responsible for overseeing or administering the operations of a public school system or an individual public school.

^a Substantive due process is the doctrine under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution requiring governmental intrusions into fundamental rights to be fair and reasonable and to further a legitimate governmental objective.⁶⁵ The Fifth Amendment directly regulates the actions of the federal government and the Fourteenth Amendment directly regulates the actions of the states.

^b Under 42 U.S.C. § 1983, any U.S. citizen or person within the jurisdiction of the U.S. may file a “Section 1983 lawsuit” in federal court against any person who, while acting under color of state law, subjects the suing party or causes the suing party to be subjected “to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [of the United States.]”

^c Equal protection is the principle under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution requiring the states to give similarly situated persons or classes of persons similar treatment under the law.⁶⁵ Many state constitutions also include equal protection provisions.⁶⁶

^d Procedural Due Process is the principle under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution requiring a governmental entity to provide a person notice and a hearing before depriving the person of a life, liberty, or property interest.⁶⁵ The Fifth Amendment directly regulates the actions of the federal government and the Fourteenth Amendment directly regulates the actions of the states.

^e Torts refer to conduct that injures another party and that amounts to a civil wrong subject to civil liability.⁶⁷ Examples of torts include negligence and intentional torts. Although some tort law scholars distinguish between “injury” (invasion of a legally protected interest) and “harm” (a “loss or detriment in fact of any kind to a person resulting from any cause”),^{67(§§ 6 & 7)} these terms are used interchangeably in this article, as is common in legal practice.

Table 2. *Hypothetical Law-Based Arguments to Promote Later School Start Time Policies*

Argument Component	Messaging Strategy		
	<i>Emphasizing Consistency with Existing Child Welfare Laws and Policies</i>	<i>Emphasizing Consistency with Existing Legal Responsibilities</i>	<i>Emphasizing Consistency with Existing Societal Values and Norms</i>
POLICY ARGUMENT	Later school start time policies are consistent with existing legal work hour restrictions for adolescents.	The combination of early school start times and biological limitations on sleep may directly cause or exacerbate certain clinical sleep disorders, thereby triggering certain responsibilities for public schools and protections for students under existing law that compel public schools to implement later school start time policies.	Later school start time policies reinforce societal values and norms concerning adolescent welfare.
RATIONALE	<ul style="list-style-type: none"> • Federal child labor laws prohibit work before 7 a.m. for some adolescents (<i>see</i> 29 C.F.R. § 570.35(a)(6)), presumably to protect child welfare and sleep (<i>see</i> 29 C.F.R. § 570.31). • By contrast, some schools routinely start classes at or around 7 a.m. and schedule extra-curricular activities at an even earlier time. 	<ul style="list-style-type: none"> • Sleep disorders that may be caused or exacerbated by the combination of early school start times and biological limitations include: <ul style="list-style-type: none"> ○ <i>Delayed Sleep-Wake Phase Disorder</i>^a ○ <i>Insufficient Sleep Syndrome</i>^b • Such clinical sleep disorders arguably constitute an injury that is redressable under existing law (<i>e.g.</i>, Americans with Disabilities Act; state tort law). 	<ul style="list-style-type: none"> • Communities expect their public schools to provide an environment for their students to learn that does not harm the overall welfare of students. • Early school start times inevitably cause sleep restriction, which arguably meets the definition of harming the welfare of students. • Community members understand this intuitively, as they would likely object to a 4 a.m. school start time because of their intuitive appreciation of the harmful impact that such an early start time would have on student health, safety, and academic performance. • Because the first classes of the day are particularly prone to having sleepy students, scheduling key subjects at this time (<i>e.g.</i>, English or Mathematics) may foreseeably limit students' achievement in these key educational indicators.

Argument Component	Messaging Strategy		
	<i>Emphasizing Consistency with Existing Child Welfare Laws and Policies</i>	<i>Emphasizing Consistency with Existing Legal Responsibilities</i>	<i>Emphasizing Consistency with Existing Societal Values and Norms</i>
POLICY QUESTIONS	Should schools be permitted to schedule any activity, even if voluntary, before 7 a.m. given the risk to child welfare established by existing child labor laws?	<ul style="list-style-type: none"> • If school start times have a direct causal role in the development of clinical sleep disorders, would delaying school start times only for the clinically diagnosed students be sufficient accommodation, or will it be necessary to delay school start times for all students? • If early school start times can be demonstrated to cause clinical sleep disorders, what should the legal consequences be for public schools? • Even without evidence of a clinical sleep disorder, are students with biological clocks that are naturally (and genetically) timed later than the average adolescent discriminated against when they are required to wake up and learn during their biological night? 	<ul style="list-style-type: none"> • Should schools be held responsible for increasing sleepiness in students through the imposition of early start times in the same way that employers may be held responsible if they schedule workers to hours that induce sleep loss?^c • Should key subjects (<i>e.g.</i>, English or Mathematics) be scheduled at the beginning of the school day, given that sleepy students are particularly prevalent in the first classes of the day?

Note. The hypothetical arguments are for illustrative purposes only and are not intended to provide advice about or reflect the law in any federal, state, or local jurisdiction. Variations in the law may exist between jurisdictions. The term “public schools” refers to public school systems and officials collectively, and the term “school officials” include elected and non-elected individuals at the state or local level responsible for overseeing or administering the operations of a public school system or an individual public school.

^a Delayed Sleep-Wake Phase Disorder is relatively common in teenagers and is “characterized by habitual sleep-wake timing that is delayed, usually more than two hours, relative to conventional or socially acceptable timing.”⁷⁵ Furthermore:

[a]ffected individuals complain of difficulty falling asleep at a socially acceptable time, as required to obtain sufficient sleep duration on a school or work night. Once sleep onset occurs, it is reportedly of normal duration. These individuals also experience difficulty arising at a socially acceptable wake time, as required to prepare for school or work. When allowed to follow his or her preferred schedule, the patient’s timing of sleep is delayed.⁷⁵ [italics added for emphasis]

ACCEPTED MANUSCRIPT (Submitted in Revised Form 24 Aug. 2017; Accepted for Publication 8 Sept. 2017)

© 2017. This manuscript version is made available under the CC-BY-NC-ND 4.0 license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

^b Insufficient Sleep Syndrome (also called Behaviorally-Induced Insufficient Sleep Syndrome) could be caused by systematically restricting the time available for sleep, and “occurs when an individual persistently fails to obtain the amount of sleep required to maintain normal levels of alertness and wakefulness.”⁷⁵ Furthermore:

The individual is chronically sleep deprived as a result of failure to achieve necessary sleep time due to reduced time in bed A detailed history of the sleep pattern reveals a substantial disparity between the need for sleep and the amount actually obtained. The significance of this disparity often goes unappreciated by the patient. *Sleep time that is markedly extended on weekend nights or during holidays compared to weekday nights is also suggestive of this disorder[.]*⁷⁵ [italics added for emphasis]

^c In some states, employers have been held liable for injuries resulting from drowsy driving crashes involving an employee commuting home who was sleep-deprived as a result of their long work hours (e.g., *Robertson v. LeMaster*, 301 S.E.2d 563 (W.V. 1983) (refusing to hold that a railroad company that required its employee to work approximately 27 hours and then “setting [the employee] loose upon the highway in an obviously exhausted condition” did not “create a foreseeable risk of harm to others which the [employer] had a duty to guard against.”)). Most states, however, have refused to hold employers liable for such incidents.⁶¹